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In re Application of :
DAY, Ian James et al. :
Application No.: 09/936,960 : DECISION ON
PCT No.: PCT/GB00/00950 :
Int. Filing Date: 20 March 2000 : PETITION
Priority Date: 18 March 1999 :
Attorney Docket No.: BAC-116-A : UNDER 37 CFR 1.181
For: ENCLOSURE FOR HARDWARE :

This decision is in response to "Petition For Revival of an Application For Patent Abandoned Unavoidably Under 37 CFR 1.137(a)," filed on 22 April 2005, which has been treated as a petition under 37 CFR 1.181 for the reasons set forth below.

BACKGROUND

On 20 March 2000, applicants filed international application PCT/GB00/00950. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 21 September 2000. A demand for international preliminary examination was filed on 16 October 2000. The deadline for entry into the national stage in the United States was 18 September 2001.

On 18 September 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 08 November 2001, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the oath or declaration were required.

On 20 October 2004, the Office mailed Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application went abandoned for failure to timely reply to the Notification of Missing Requirements.

On 10 March 2005, applicants filed a petition to withdraw the holding of abandonment.

On 25 March 2005, the Office mailed Decision On Petition Under 37 CFR 1.181, dismissing applicants' petition without prejudice.

On 22 April 2005, applicants submitted the instant renewed petition.

On 14 July 2005, practitioner submitted a statement indicating that the handwritten docket records is complete for the firm.

DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Items (1), (2) and (3) have now been satisfied. Practitioner states that the Office Action was not received by the practitioner. Practitioner also states that he searched the file jacket and docket records and that they indicate that the Office action was not received. Practitioner has supplied the docket records where the action would have been docketed had it been received and docketed.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

The Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 08 November 2001 is **VACATED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 20 October 2004 is **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including mailing of a new Notification of Missing Requirements indicating that a declaration in compliance with 37 CFR 1.497(a)-(b) is required.

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